

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, 500 Pearl Street, in the City of New York, on the 23rd day of August, two thousand and six.

PRESENT:

HON. DENNIS JACOBS,
HON. ROBERT D. SACK,
HON. PETER W. HALL,
Circuit Judges.

Efendi Susanto,
Petitioner,

-v.-

No. 05-0862-ag
NAC

Alberto R. Gonzales, Attorney General of
the United States,
Respondent.

FOR PETITIONER: H. Raymond Fasano, New York, New York.

FOR RESPONDENT: Gregory A. White, United States Attorney for the Northern
District of Ohio, Laura McMullen Ford, Special Assistant
United States Attorney, Cleveland, Ohio.

UPON DUE CONSIDERATION of this petition for review of the Board of Immigration
Appeals ("BIA") decision, it is hereby ORDERED, ADJUDGED, AND DECREED that the

1 petition for review is DENIED.

2 Efendi Susanto, a native and citizen of Indonesia, seeks review of a January 27, 2005
3 order of the Board of Immigration Appeals (“BIA”) denying Susanto's motion to reopen and to
4 reconsider an October 25, 2004 order of the BIA denying Sustanto's appeal from the March 25,
5 2003 decision of Immigration Judge (“IJ”) Barbara A. Nelson denying petitioners' applications
6 for asylum, withholding of removal, and relief under the Convention Against Torture (“CAT”).
7 *In re Efendi Susanto*, No. A95 459 875 (B.I.A. Jan. 27, 2005). We assume the parties’
8 familiarity with the underlying facts and procedural history of the case.

9 This Court reviews the BIA’s denial of a motion to reopen or reconsider for abuse of
10 discretion. *See Kaur v. BIA*, 413 F.3d 232, 233 (2d Cir. 2005) (per curiam); *Jin Ming Liu v.*
11 *Gonzales*, 439 F.3d 109, 111 (2d Cir. 2006). An abuse of discretion may be found where the
12 BIA’s decision “provides no rational explanation, inexplicably departs from established policies,
13 is devoid of any reasoning, or contains only summary or conclusory statements; that is to say,
14 where the Board has acted in an arbitrary or capricious manner.” *Kaur*, 413 F.3d at 233-34; *Ke*
15 *Zhen Zhao v. U.S. Dep’t of Justice*, 265 F.3d 83, 93 (2d Cir. 2001) (internal citations omitted).

16 In his petition to this Court, Susanto does not contest the denial of his motion to
17 reconsider. As a result, Susanto has waived any challenge based on that motion. *See Yueqing*
18 *Zhang v. Gonzales*, 426 F.3d 540, 542 n.1, 546 n.7 (2d Cir. 2005).

19 As to the motion to reopen, the BIA reasonably found that Susanto did not successfully
20 challenge (in either his appeal or in his motion) the IJ's adverse credibility finding, but rather
21 largely reiterated arguments that he made in connection with his appeal, and which the BIA had
22 already evaluated. *Cf. Jin Ming Liu*, 439 F.3d at 111.

1 The BIA also reasonably found that Susanto had not “adequately demonstrated
2 meaningfully changed circumstances in Indonesia since the time of the hearing before the
3 Immigration Judge to support reopening of [his] proceedings” pursuant to 8 C.F.R. §
4 1003.2(c)(1). Susanto’s motion argued that certain background material established changed
5 country conditions in Indonesia—i.e., “ever-worsening problem[s] in Indonesia with respect to
6 the persecution of Christians and non-Muslims in general” at the hands of “extremist” Muslims.
7 Although Susanto's brief discusses the alleged increased problems for non-Muslims, it makes no
8 attempt to discuss persecution against Chinese in Indonesia. Further, Susanto’s brief relies
9 primarily on the 2002 State Department International Religious Freedom Report (“2002 Freedom
10 of Religion Report”) that was issued on October 7, 2002, five months before Susanto's final
11 hearing before the IJ when the record was closed, and was in fact part of the record that the IJ
12 considered. In addition, most of the documentation Susanto submitted with his appeal predates
13 the closing of the record by the IJ, and much of Susanto's brief simply recounts existing
14 conditions without showing how these conditions demonstrate an upsurge in religious
15 persecution.

16 For the foregoing reasons, the petition for review is DENIED. Having completed our
17 review, any stay of removal that the Court previously granted in this petition is VACATED, and
18 any pending motion for a stay of removal in this petition is DENIED as moot. Any pending
19 request for oral argument in this petition is DENIED in accordance with Federal Rule of

1 Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

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FOR THE COURT:

Roseann B. MacKechnie, Clerk

By: _____